

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MATTHEW WHITTEN,

Plaintiff,

vs.

CITY OF OMAHA, et al.,

Defendant.

**ORDER**

**8:15CV96**

The plaintiff has moved to file an appeal in forma pauperis. (Filing No. [58](#)). “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith. [28 U.S.C.A. § 1915](#) (a)(3).”

Plaintiff has filed a notice to appeal Judge Gerrard’s order of Defendants’ motions to dismiss. (Filing No. [57](#)). That ruling dismissed some, but not all, of Plaintiff’s claims based on qualified immunity. An order partially dismissing Plaintiff’s claims based on a finding of immunity is not an immediately appealable order. See [Franzen v. Federal Land Bank of Omaha \(Farm Credit Bank\)](#), 897 F.2d 973 (8th Cir. 1990). See also, [Morris-Hayes v. Board of Educ. of Chester Union Free School Dist.](#), 423 F.3d 153 (2d Cir. 2005); [Baird v. Palmer](#), 114 F.3d 39, 43 (4th Cir. 1997); [Coe v. Ziegler](#), 817 F.2d 29 (6th Cir. 1987); [Barnes v. Black](#), 544 F.3d 807 (7th Cir. 2008); [Mathis v. County of Lyon](#), 633 F.3d 877 (9th Cir. 2011); [Primas v. City of Oklahoma City](#), 958 F.2d 1506 (10th Cir. 1992); [Winfrey v. School Bd. of Dade Cty.](#), 59 F.3d 155, 158 (11th Cir. 1995).

The court dismissed Whitten's unlawful search claim against the individual-capacity defendants, finding these defendants were entitled to qualified immunity on that claim. But it has not entered a final judgment as to all Plaintiff’s claims against all

defendants. Since there is no appealable order, the court hereby certifies that Plaintiff's notice of appeal is not taken in good faith.

Accordingly,

IT IS ORDERED that Plaintiff's motion to file an appeal in forma pauperis, (Filing No. [58](#)), is denied.

August 28, 2016.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge